


# Administrative Office of the Courts

Chief Justice Richard C. Howe  
Chairman, Utah Judicial Council

## MEMORANDUM

Daniel J. Becker  
State Court Administrator  
Myron K. March  
Deputy Court Administrator

**To:** Julia D'Alesandro, Audit  
**From:**  Brent Johnson, General Counsel  
**Re:** Court Costs  
**Date:** August 15, 2001

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This memorandum is in response to your questions concerning court costs associated with orders to show cause and driver license suspensions. The specific questions relate to whether a court may impose costs on a defendant for a second and subsequent order to show cause, and when sending a failure to appear or failure to comply to the Driver License Division. This is a somewhat difficult question to answer because the statutes related to this issue can be subject to a broad interpretation. It is my opinion that these costs should not be imposed unless done uniformly throughout the state, which is not occurring. However, because the statutes are not clear on this issue, it will be difficult to impose a this viewpoint.

Utah Code Ann. § 77-18-7 states that "unless specifically authorized by statute, a defendant shall not be required to pay court costs in a criminal case either as a part of a sentence or as a condition of probation or dismissal." In order for court costs to be imposed, they must therefore be "specifically" authorized by statute. As you have already noted, there is nothing that specifically authorizes court costs in the two situations that you described. The only possible provision which might justify these costs is found in § 77-32a-2. This section allows the court to impose costs. The section states that:

costs shall be limited to expenses specially incurred by the state or any political subdivision investigating, searching for, apprehending, and prosecuting the defendant, including attorneys fees of counsel assigned to represent the defendant, interpreter fees, and investigator fees. Costs cannot include expenses inherent in providing a constitutionally guaranteed trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.

**The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.**

The court cannot impose costs for routine matters that occur in every case, such as clerk time, judge's time, fees for filing an information, the prosecutor's time, juror fees, law enforcement's time, etc. The court can impose costs for fees "specially incurred" in an individual case. It is this language which creates the possibility for broad interpretation. In the situations that you have described, an argument could be made that these costs are specially incurred because orders to show cause and failures to comply or appear do not occur in every case. An argument could be made that a defendant should bear the burden of costs for those things that do not normally occur in a criminal case. When a defendant fails to comply, an argument can be made that the defendant should bear the burden of the costs, rather than the taxpayer who supports the judicial system. On the other hand, an argument can be made that orders to show cause and failures to comply occur with such regularity, that there is nothing "special" about these processes and costs should not be imposed. Either argument is viable.

There are inherent problems with the statutes which makes this a difficult issue. On the one hand, a statute says that costs can only be imposed if they are "specifically" authorized. On the other hand, there is a statute which authorize costs, but it does not do so in a specific fashion. The statutes are therefore somewhat at odds with each other. It will ultimately take an appellate court decision to determine what is appropriately considered a court cost under these statutes. (A review of case law from other states has not provided any solid precedent.) Until that time, because it does not appear to be specifically prohibited, the costs that you have mentioned are not automatically "illegal." Again, because other courts are not imposing these costs, I do not think it should be done, but I do not believe we can enforce that.